

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO NO 791 OF 1989

DATE OF DECISION: 24.07.2006

GURDEV SINGH AND OTHERS

....APPELLANTS

VERSUS

GURMIT SINGH AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**PRESENT:MR. G.S. PUNIA, ADVOCATE
FOR APPELLANT NOS. 1,3 TO 6.
MR. ASHWANI VERMA, ADVOCATE
FOR APPELLANT NO. 2.
MR. MUNISHWAR PURI, ADVOCATE
FOR RESPONDENT NO. 3.**

JUDGMENT

Parents, widow and children of deceased Bhinder Singh have approached this Court by way of present appeal for enhancement of compensation, against the award of the Motor Accident Claims Tribunal, Ropar (for short 'the Tribunal') dated July 2, 1988.

At the very outset, counsel for the appellants stated that appellant No. 1, namely Gurdev Singh son of Kundan Lal, father of the deceased has expired during the pendency of appeal, hence his name may be deleted from the array of parties. Ordered accordingly.

The Registry is directed to carry out necessary correction in the memo of parties.

Briefly the facts as evident from the award are that, on 22.6.1987 at about 1.30 P.M. the deceased was driving his scooter No. CHB 5282 on the left side of the road while a truck /tipper bearing No. CHW 6751 driven rashly and negligently by Gurmit Singh came from Ropar side and while taking the truck on the wrong side of the road it struck against the scooter, as a result of which Bhinder Singh died on the spot. Driver of the truck fled away from the spot. FIR was duly lodged with the police by an

eye-witness Sh. Umrao Singh. In reply to the claim petition, the respondents admitted the accident but denied their liability by contending that the accident took place on account of negligence on the part of the deceased himself. For considering as to whether death of Bhinder Singh has taken place on account of rash and negligent driving of the driver of truck, two issues were framed and on the basis of evidence, it was found that the accident took place due to rash and negligent driving on the part of the truck driver Gurmit Singh.

As far as the amount of compensation on account of death of Bhinder Singh is concerned, it was stated by the widow that he was engaged in the selling of milk, had a poultry farm, used to drive tractor and do agriculture work. He used to give Rs. 3,000/- per month to her.

Without considering the evidence on record, the Tribunal assessed compensation in lump sum at Rs. 1 lac, which was directed to be apportioned amongst the parents, widow and minor children (at the relevant time).

I have heard counsel for the parties and with their assistance have perused the documents on record.

It is stated in the evidence of father of the deceased that deceased was 25 years of age at the time of death. He was matriculate and used to do agriculture work, dairy farming and was also running a poultry farm. He was also used to drive the tractor. He stated that he owns 20 killas of land. It is further stated that deceased used to give him Rs. 3,000/- per month for household expenses. Jagat Ram, PW-7 stated that he used to buy about 50-60 Kgs. of milk everyday from deceased. In her evidence widow of deceased stated that he used to give her Rs. 3,000/- per month and had left behind her, his parents and three minor children aged about 4-1/2 years, 2-1/2 years and ten months old.

As is evident from the present case, the Tribunal has made assessment of compensation in lump-sum without determining the income of the deceased and also his dependency. Adoption of such a course has been deprecated by Hon'ble the Supreme Court in **U.P. State Road Transport Corporation vs. Trilok Chandra** 1996 ACJ 831 (SC), it has been held that there should be no departure from the multiplier method on

the ground that payment being made is just compensation. It has been held that multiplier method must be accepted for determining and ensuring payment of just compensation as it is the method which brings uniformity and certainly to awards made all over the country.

On a total consideration of the matter and the evidence on record, the income of deceased, who was able bodied young person of 25 years of age at the time of death, is assessed at Rs. 1500/- per month and applying 1/3rd cut i.e. Rs. 500/-, the dependency is assessed at Rs. 1000/- per month i.e. Rs. 12,000/- per annum. Applying the multiplier of 18, keeping in view the age of deceased being 25 years, the amount of compensation is determined at Rs. 2,16,000/-. In addition to this the appellant will also be entitled to Rs. 2000/- on account of expenses incurred on carrying out last rites of the deceased. The additional amount of compensation of Rs. 1,18,000/- along with interest at the rate of 7.5 % per annum from the date of application i.e. 21.7.1987 will be payable to the appellants Nos. 2 to 6. The amount will be apportioned amongst the appellants in the following manner: 15 % each will be given to the mother and three children of the deceased. Balance 40 % will be given to the widow of deceased.

Another issue raised during the course of arguments is as regards the liability of the Insurance Company. As per the contention of the counsel for the Company, the liability of the Company is limited to Rs. 1,50,000/- in terms of the policy placed on record by them as no extra premium was paid by the insured. Pleadings to that effect have also been made in para 21 of the reply filed by the Company before the Tribunal. Keeping this in view, the liability of the Insurance Company is restricted to Rs. 1,50,000/- only. At this stage counsel for the appellants submitted that in terms of settled position of law by various judgments of Hon'ble the Supreme Court as well as this Court, the entire amount of compensation should be directed to be paid by the Insurance Company to the claimants/appellants, who may recover the excess amount from the insured. To support his arguments he has relied upon the judgments in **Oriental Insurance Co. Ltd. vs. Cheruvakkara Nafeessu and Ors** JT 2001 (1) Supreme Court 341, **National Insurance Co. Ltd. vs. Challa**

Bharathamma and others 2004 (3) ACJ 2094 and Gurmeet Kaur and another vs. Mohinder Singh and others 2006 (1) PLR 684. In Cheruvakkara Nafeessu's case (supra) it is held as under:

“11. The appeal is accordingly allowed holding that the appellant-company is liable to pay the entire award amount to the claimants. Upon making such payment the appellant can recover the excess amount from the insured by executing this Award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. No costs”

I have perused the judgments which clearly support the contention raised by the counsel for the appellants. In this view of the matter, it is directed that the entire amount of enhanced compensation shall be paid by the Insurance Company to the claimants and in terms thereof they would be entitled to recover the excess amount from insured in accordance with law.

The award of the Tribunal is modified to the extent indicated above.

The appeal is disposed of accordingly.

July 24 , 2006
gsv

(RAJESH BINDAL)
JUDGE